

1 RENE L. VALLADARES
Federal Public Defender
2 Nevada Bar No. 11479
DAVID ANTHONY
3 Assistant Federal Public Defender
Nevada Bar No. 7978
4 David_Anthony@fd.org
MARTIN L. NOVILLO
5 Assistant Federal Public Defender
Virginia State Bar No. 76997
6 Martin_Novillo@fd.org
T. KENNETH LEE
7 Assistant Federal Public Defender
Ohio Bar No. 0065158
8 Ken_Lee@fd.org
411 E. Bonneville, Ste. 250
9 Las Vegas, Nevada 89101
(702) 388-6577
10 (702) 388-5819 (Fax)

11 Attorneys for Petitioner

12 UNITED STATES DISTRICT COURT

13 DISTRICT OF NEVADA

14 JAMES RAY WALKER,

15 Petitioner,

16 v.

17 WILLIAM GITTERE, et al.,

18 Respondents.
19

Case No. 2:15-cv-01240-RFB-EJY

**UNOPPOSED MOTION FOR
EXTENSION OF TIME TO FILE
SECOND AMENDED PETITION
FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION)**

(FIRST REQUEST)

DEATH PENALTY CASE

21 James Ray Walker, through counsel, hereby requests an extension of time of
22 ninety (90) days, up to and including Monday October 4, 2021, within which to file
23 his Second Amended Petition for Writ of Habeas Corpus. This is Mr. Walker's first

1 request for an extension of time. The State does not oppose the motion. This request
2 is made and based on the following declaration of counsel and the entire file herein.

3 DATED this 6th day of July, 2021.

4 Respectfully submitted
5 RENE L. VALLADARES
6 Federal Public Defender

7 /s/ Martin L. Novillo
8 MARTIN L. NOVILLO
9 Assistant Federal Public Defender
10
11
12
13
14
15
16
17
18
19
20
21
22
23

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3

I, Martin L. Novillo, declare as follows:

1. I am an attorney at law, admitted to practice before this Court, and served as an Assistant Federal Public Defender. I represent petitioner James Walker in this capital habeas case, having entered my appearance in this case on April 21, 2021. ECF No. 93.

2. Mr. Walker filed his proper person Petition for a Writ of Habeas
s on June 30, 2015. ECF No. 1. Mr. Walker amended his petition following the
tment of the Federal Public Defender for the District of Nevada (FPD). ECF
0, 77. On March 30, 2016, this Court entered an order staying this action
Petitioner exhausted in state court his unexhausted claims for habeas corpus
ECF No. 69.¹ The state proceedings concluded and, on May 6, 2021, this
entered an Order vacating the stay previously entered and to re-opening Mr.
r's federal habeas action. ECF No. 98. The Court further provided Mr. Walker
have 60 days, or until Monday July 5, 2021, to file a second amended petition
t of habeas corpus. Counsel for Mr. Walker now seeks a ninety day (90) day
ion to file Mr. Walker's second amended petition. Respondents do not oppose
quest.

¹ The Court denied the Respondents' motion for reconsideration of its order November 18, 2016. ECF No. 74. The Court temporarily lifted the stay on May 17 to allow Mr. Walker to supplement his petition for writ of habeas corpus with a new claim. ECF No. 81. The Court noted the stay remained in effect in all respects. ECF No. 81.

1 3. An extension of time to file Mr. Walker’s second amended petition is
2 merited on account of several filing deadlines and commitments undersigned
3 counsel recently had to meet in various capital habeas matters. Since the May 6,
4 2021 Order reopening Mr. Walker’s case, undersigned counsel has had to prepare
5 and finalize claims for an amended habeas petition to be filed in early July 2021 in
6 California state court in the capital habeas matter of *Maury (Robert Edward) on*
7 *H.C.*, 2011 Cal. LEXIS 12099 (2011). Similarly, counsel has had to investigate and
8 prepare claims for an amended petition due also in July 2021 in Nevada state court
9 in the capital habeas matter of *Biela v. State*, 2019 Nev. Unpub. LEXIS 475 (2019).
10 Further, counsel had to review the record, investigate claims, and prepare an
11 amended petition—filed on June 15, 2021—in the non-capital habeas matter of
12 *Bautista v. Garrett, et al.*, 20-cv-00403-LRH (D. Nev.). Finally, counsel has had to
13 prepare various pre-trial motions in the out-of-district federal capital trial case
14 *United States v. Schlesinger*, 18-cr-02719-RCC-BGM (D. Ariz.), including a one
15 hundred fifty (150) page motion challenging the Federal Death Penalty Act (FDPA).

16 4. An extension of time is further merited on account of personal
17 circumstances affecting co-counsel for Mr. Walker, Kenneth Lee. Specifically,
18 counsel Mr. Lee underwent back surgery on June 22, 2021. Mr. Lee will be
19 unavailable for several weeks as he recovers from the surgery. Moreover, Mr. Lee’s
20 surgeon has informed counsel that he will not be able to travel or drive for at least
21 the next seven weeks. As a result, the earliest counsel would be able to visit Mr.
22 Walker would be the week of August 16, 2021.

1 5. Finally, an extension of time is needed so undersigned counsel can
2 finalize his review of Mr. Walker's trial, appellate, and post-conviction record.
3 Undersigned counsel was only recently designated as lead counsel for Mr. Walker.
4 *See* ECF No. 93. Prior to that designation and while in state court exhausting
5 claims, counsel reviewed and addressed specific issues raised in Mr. Walker's
6 petition, but did not conduct a comprehensive and exhaustive review of the record.
7 For the past several months, undersigned counsel has engaged in a diligent review
8 of the entire record to ensure Mr. Walker is adequately represented in his habeas
9 proceedings. Counsel's review is now nearly complete.

10 6. The present request for an extension is unopposed. On July 2, 2021,
11 counsel for Petitioner contacted Deputy Attorney Jessica Perlick via email concerning
12 this request for an extension of time. Ms. Perlick has no objection to the request.
13 Petitioner understands that opposing counsel's non-opposition does not waive any
14 claims, defenses, statute of limitations, or other substantive arguments the
15 Respondents may choose to raise at a later date.

16 7. This requested extension will permit counsel time to properly review Mr.
17 Walker's record and file an amended petition. It is not made for the purposes of delay,
18 but rather in the interests of justice.

19 I declare under penalty of perjury that the foregoing is true and correct, and
20 that this declaration was executed on July 6, 2021, in Las Vegas, Nevada.

21 IT IS SO ORDERED:

22 

23 _____
RICHARD F. BOULWARE, II
United States District Judge
DATED this 8th day of July, 2021.

/s/ Martin L. Novillo
MARTIN L. NOVILLO
Assistant Federal Public Defender

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

Jessica Perlick
Deputy Solicitor General
jperlick@ag.nv.gov

/s/ Sara Jelinek
An Employee of the
Federal Public Defender